

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TABA KARRON HERBERT,

Petitioner,

vs.

MARTIN BITER, Warden,

Respondent.

CASE NO. 12-CV-788-LAB-WVG


**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Herbert filed a habeas petition on March 29, 2012 and an amended petition on August 30, 2012. Pursuant to 28 U.S.C. § 636(b) and Civil Local Rules 72.1(c) and (d) the petition was referred to Magistrate Judge Gallo for a Report and Recommendation ("R&R"). Now pending before the Court is Respondent's motion to dismiss the petition because it is barred by the statute of limitations. Judge Gallo issued his R&R on February 4, 2013 agreeing with respondent and giving Herbert until February 28, 2013 to file an objection. Herbert failed to file one, which is of substantial consequence for him. See Fed. R. Civ. P. 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (district judge "must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise"). The Court has also independently reviewed

1 Judge Gallo's R&R and finds it be thorough and well reasoned. The Court therefore  
2 **ADOPTS** the R&R in its entirety, and Biter's motion to dismiss Herbert's habeas  
3 petition is **GRANTED**.

4  
5 **IT IS SO ORDERED.**

6 DATED: March 12, 2013

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8 **HONORABLE LARRY ALAN BURNS**  
9 United States District Judge